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Amendment After Final
Attorney Docket No. D55.2B-10027-US01

Remarks

This Amendment is in response to the Office Action dated **April 15, 2005**. In the Office Action claims 1, 2, 9, 12, 14, 15, and 17 were asserted to be unpatentable under 35 USC 103(a) over US Patent 5, 844,162 to Renner and the *Illustrated Book of Guns*. Claims 3, 5, 6, and 8 were asserted to be unpatentable under 35 USC 103(a) over US Patent 5, 844,162 to Renner and the *Illustrated Book of Guns*, and further in view of US Patent 4,546, 564 to A'Costa. Claims 19-23 has been added and claim 1 has been amended. No new matter has been added.

In addition, a Declaration of Wendell Diller pursuant to 37 CFR §132 is submitted herewith. Attached to the declaration are specimens A, B, C, D, E1, E2, F, G, and H. These specimens are included to provide further evidence that the current understanding of vented barrels is that they increase the noise associated with discharge, contrary to the claim language of the instant invention.

Applicant will address the above rejections under heading consistent with the paragraph numbering of the Office Action.

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Claims 1, 2, 9, 12, 14, 15, and 17 were asserted to be unpatentable under 35 USC 103(a) over US Patent 5, 844,162 to Renner and the *Illustrated Book of Guns*. Applicant respectfully traverses the rejection by the examiner. When rejecting for obviousness the claimed invention must be considered as a whole (see, e.g., *Jones v. Hardy*, 727 F.2d 1524, Fed. Cir. 1984). Claim 1 recites, "said vents being constructed and arranged to minimize sound report by gradual release of gases". Renner does not teach or suggest minimization of sound. As pointed out in the Final Office Action, Renner teaches *reduced* recoil and *dispersed* smoke and sound

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the prior art teaches away from achieving noise reduction through the use of ports/vents.

Applicant respectfully requests that the obviousness rejection be withdrawn.

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Claims 3, 5, 6, and 8 were asserted to be unpatentable under 35 USC 103(a) over Renner and GUNS as applied to claim 1 and further in view of US Patent 4,546,564 to A'Costa. Neither Renner nor GUNS teaches or suggests noise reduction through the use of vented barrels. This limitation is also lacking in A'Costa. Thus, claims 3, 5, 6, and 8 are believed to be allowable for at least the reason that they claim dependence on base claim 1 which is believed to be in condition for allowance.

In addition regarding claim 8, none of the references cited against this claim teach or suggest a barrel having a length of approximately 7 feet. The Final Office Action states that "it is well known in the art that the longer the barrel the greater the velocity and accuracy". Greater accuracy and velocity is non-analogous to the problem of noise reduction. In the instant invention, the elongated barrel actually represents the length of time during which the gasses can be released for sound reduction. The longer the barrel, the more time to release the gases at a controlled rate which results in less noise. None of the cited references teach or suggest reduction in noise through the use of an elongate vented barrel such as that of claim 8. For at least this additional reason claim 8 is in condition for allowance. Applicant respectfully requests that the obviousness rejection of claims 3, 5, 6, and 8 be withdrawn.

It is only through hindsight that one can now associate vented or ported barrels with sound reduction. This is impermissible as obviousness is based on the knowledge available at the time of the invention not that which has come to light through the invention.

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(Col. 2, lines 10-25). "Disperse" is not the same as "reduce"; "disperse" is to "redirect". The instant invention is to reduce sound, not redirect it. Renner does not teach or suggest sound reduction, nor does GUNS provide this absent teaching. GUNS as referenced is silent as to ports being used for noise reduction and is used solely to provide evidence that barrels 3 ft in length are known in the art. Thus, a finding of obviousness is misapplied.

In addition, the claim is not obvious regarding the barrel being at least three feet in length. The barrels having a 3 ft length in the GUNS reference, as stated above, are not vented nor does the GUN reference teach or suggest the desirability of having a ported barrel. Likewise Renner does not teach or suggest the desirability of a barrel three feet in length. For at least this reason the asserted combination is not suggested and is inappropriate.

Furthermore, the prior art and common knowledge associate venting (i.e., porting) is that venting results in increased noise, not reduced noise. The prior art in fact teaches away from ports/vents in the barrel in order to reduce noise. Previously cited US Patent 2,512,741 to Crandall states, "such vent holes are for the purpose of reducing recoil and kick and serve actually to aggravate the annoyance to a by-stander due largely to the directing of the gases to either side of the muzzle" (Col. 1, lines 15-47). Renner teaches the use of greater jet force to reduce recoil and muzzle rise which will result in greater "annoyance (noise)". The increased noise associated with conventional ported or vented barrels as taught in Renner is well-established in the shooting community, please see the submitted articles and gun-hobbyist forum postings (specimens A, B, C, D, E1, E2, F, G, and H) submitted with the declaration. Again, the instant invention teaches noise *reduction* through venting the gases through vents on the barrel. Merely having ports does not provide this noise reduction, as evidenced in the prior art and submitted specimens. Thus, the obviousness rejection is misapplied for the additional reason that

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Conclusion

In light of the above comments, claims 1-3, 5, 6, 8, 9, 12, 14, 15, 17, and new claims 19-23 are believed to be in condition for allowance. Notification to that effect is respectfully requested.

Respectfully submitted,

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